

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

CASE NO. CR09-0160JLR

Plaintiff,

ORDER DIRECTING PAYMENT  
FROM INMATE TRUST  
ACCOUNT

1

WILLIAM S. POFF,

Defendant.

## I. INTRODUCTION

16 Before the court are the following motions: (1) Plaintiff United States of  
17 America's ("the Government") motion for an order requiring the Bureau of Prisons  
18 ("BOP") to relinquish funds that are presently held in Defendant William S. Poff's  
19 inmate trust account to the Clerk of Court for the purpose of paying criminal monetary  
20 penalties imposed upon Mr. Poff in this case (US Mot. (Dkt. # 306)), (2) Mr. Poff's  
21 motion to unencumber his inmate trust account (Poff Mot. (Dkt. # 308)), (3) Mr. Poff's  
22 motion for clarification (2d Poff Mot. (Dkt. # 313)), and (4) Mr. Poff's motion to

1 preclude fraud (3d Poff Mot. (Dkt. # 315)).<sup>1</sup> The court has considered the motions, all  
 2 submissions filed by the parties in support of or opposition to the motions, the relevant  
 3 portions of the record, and the applicable law. Being fully advised, the court GRANTS  
 4 the Government's motion and DENIES Mr. Poff's motions.

5 **II. BACKGROUND**

6 On October 12, 2010, the court entered a criminal judgment against Mr. Poff for  
 7 multiple counts of Bank Fraud, Wire Fraud, and Money Laundering. (Judgment (Dkt.  
 8 # 259).) The court sentenced Mr. Poff to 135 months in prison followed by five years of  
 9 supervised release. (*Id.* at 3-4.) The sentence also required Mr. Poff to pay restitution in  
 10 the amount of \$4,258,529.13. (*Id.* at 6.) The criminal judgment recites that Mr. Poff's  
 11 restitution payment "IS DUE IMMEDIATELY." (*Id.* at 8 (capitalization in original).)  
 12 The criminal judgment requires Mr. Poff to pay "no less than 25% of [his] inmate gross  
 13 monthly income or \$25.00 per quarter, whichever is greater" while he is imprisoned.  
 14 (*Id.*) However, this payment schedule "is the minimum amount that the defendant is  
 15 expected to pay towards the monetary penalties," and Mr. Poff is expected to "pay more

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17 <sup>1</sup> The Government filed its motion on April 20, 2016. (*See* US Mot.) Mr. Poff filed his  
 18 initial motion on April 21, 2016. (*See* Poff Mot.) The court construed Mr. Poff's initial motion  
 19 as a response to the Government's motion. (*See* 4/15/16 Dkt. Entry.) On April 28, 2016, the  
 20 Government filed a reply memorandum in support of its motion. (Reply (Dkt. # 309).)  
 21 However, on May 2, 2016, Mr. Poff filed a response to the Government's motion. (Resp. (Dkt.  
 22 # 310).) One week later, Mr. Poff filed his motion for clarification, which addresses the same  
 23 issues as the Government's motion and Mr. Poff's first motion. (*See* 2d Poff Mot.) Accordingly,  
 24 the court granted the Government leave to file an additional three-page surreply memorandum.  
 25 (5/10/16 Order (Dkt. # 312).) The Government filed its surreply on May 11, 2016. (Surreply  
 26 (Dkt. # 314).) On May 26, 2016, Mr. Poff filed his motion to preclude fraud, which also  
 27 addresses the same issues as those in the Government's motion and Mr. Poff's first and second  
 28 motions, although it raises a new argument. (*See* 3d Poff Mot.)

1 than the amount established whenever possible.” (*Id.*) The remaining balance on Mr.  
2 Poff’s restitution as of April 15, 2016, was \$4,255,591.63. (Fernandez Decl. (Dkt. # 307)  
3 ¶ 3.)

4 The BOP establishes inmate trust accounts to maintain inmates’ monies received  
5 from prison employment, friends, family, and other sources. 28 C.F.R. § 506.1. Mr. Poff  
6 presently has a balance in his inmate trust account of at least \$2,663.05. (Fernandez  
7 Decl. ¶ 4.) At the request of the United States Attorney’s Office, the BOP has  
8 encumbered Mr. Poff’s inmate trust account to prevent him from making withdrawals.  
9 (*Id.* ¶¶ 4-5.) The Government now moves for an order authorizing the BOP to turn over  
10 funds from Mr. Poff’s inmate trust account to the Clerk of Court to be applied towards  
11 Mr. Poff’s restitution balance (*see* US Mot.), and Mr. Poff moves for an order directing  
12 the BOP to unencumber his account (*see* Poff Mot.; 2d Poff Mot.; 3d Poff Mot.). The  
13 court now considers the parties’ motions.

### 14 III. ANALYSIS

15 The Government seeks an order authorizing the BOP to turn over funds in Mr.  
16 Poff’s inmate trust account to be applied to the \$4,255,591.63 in restitution that Mr. Poff  
17 owes as part of his sentence. (*See generally* US Mot.) An order of restitution is a lien in  
18 favor of the United States on all property and rights to property of the defendant. 18  
19 U.S.C. § 3613(c). Further, an order of restitution may be enforced by the United States in  
20 the same manner that United States recovers fines or “by all other available and  
21 reasonable means.” 18 U.S.C. § 3664(m)(1)(A)(i). In addition, the Mandatory Victims  
22 Restitution Act provides:

1       If a person obligated to provide restitution, or pay a fine, receives  
 2 substantial resources from any source, including inheritance, settlement, or  
 3 other judgment, during a period of incarceration, such person shall be  
 4 required to apply the value of such resources to any restitution or fine still  
 5 owed.

6       18 U.S.C. § 3664(n). “Under these statutes, courts have found it appropriate to order the  
 7 turnover of funds in inmate trust accounts to be applied to restitution.” *See United States  
 v. Hester*, No. 10CR2967 BTM, 2016 WL 1007335, at \*2 (S.D. Cal. Mar. 14, 2016)  
 8 (collecting cases).<sup>2</sup>

9       Nevertheless, Mr. Poff has objected to the Government’s motion on two general  
 10 grounds. (*See generally* Poff Mot.; Resp. (Dkt. # 310); 2d Poff Mot.) He objects that  
 11 BOP encumbered his account without due process. (*See* Poff Mot. at 3; Resp. at 4.) He  
 12 also objects that his veteran’s disability service benefits are exempt from the  
 13 Government’s debt collections efforts. (*See* Resp. at 3; 2d Poff Mot. at 3-4; *see generally*  
 14 3d Poff Mot.) The court addresses these issues in turn.

15       **A. Due Process**

16       Mr. Poff asserts that the Government violated his due process rights when the  
 17 Government requested that the BOP encumber Mr. Poff’s inmate trust account pending  
 18 disposition of the Government’s present motion. (Poff Mot. at 3 (“[T]he Ninth Circuit  
 19 has explicated that there is no question that prisoners have a protected liberty interest in  
 20 their prison trust accounts, and that the institution ‘must provide a hearing prior to

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21       <sup>2</sup> The narrow exemptions available to criminal restitution debtors enumerated in 18  
 22 U.S.C. § 3613(a) do not apply to the funds contained in Mr. Poff’s inmate trust account. *See* 18  
 U.S.C. § 3613(a)(1)-(3).

1 freezing a significant sum in the inmate's account.”” (quoting *Quick v. Jones*, 754 F.2d  
2 1521 (9th Cir. 1985)).)

3       Prisoners have a protected property interest in the funds in their prison trust  
4 accounts. *Shinault v. Hawks*, 782 F.3d 1521 1057 (9th Cir. 2015) (citing *Quick*, 754 F.2d  
5 at 1523). “[I]n *Mathews v. Eldridge*, the Supreme Court set forth a three-part inquiry to  
6 determine whether the procedures provided to protect a liberty or property interest are  
7 constitutionally sufficient.” *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1192  
8 (9th Cir. 2015) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)). “The  
9 *Mathews* test balances three factors: (1) the private interest affected; (2) the risk of  
10 erroneous deprivation through the procedures used, and the value of additional  
11 safeguards; and (3) the government’s interest, including the burdens of additional  
12 procedural requirements.” *Shinault*, 782 F.3d at 1057 (citing *Mathews*, 424 U.S. at 335).

13       The first *Mathews* factor—“the private interest affected”—refers to Mr. Poff’s  
14 interest in his inmate trust account. *See id.* “There is no question that [an inmate’s]  
15 interest in funds in his prison account is a protected property interest.” *Id.* In *Shinault*,  
16 the inmate received a substantial settlement from a medical liability claim. *Id* at 1055-56.  
17 In response, the Oregon Department of Corrections (“ODOC”) issued an order requiring  
18 the inmate to pay the estimated cost of his incarceration pursuant to state law and placed  
19 tens of thousands of dollars in the inmate’s prison account on hold pending an  
20 administrative hearing on the issue. *Id.* at 1056. The Ninth Circuit found that the  
21 prisoner’s interest “was clearly substantial” because the ODOC had “deprived him of  
22 access to a significant amount of his funds.” *Id.* at 1057.

1 The Government, however, asserts that unlike the inmate in *Shinault*, Mr. Poff's  
 2 interest in his inmate trust account is tempered by the Government's \$4.2 million  
 3 judgment lien that arose upon entry of the criminal judgment and order of restitution in  
 4 this case. *See* 18 U.S.C. §§ 3613(c), (f). Indeed, the Government's judgment lien  
 5 encompasses "all property and rights to property" owned by Mr. Poff, 18 U.S.C.  
 6 § 3613(c), and is enforceable upon all of his property at the time judgment is entered,  
 7 *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993). In the context of a motion  
 8 under Federal Rule of Criminal Procedure 41(g),<sup>3</sup> the Ninth Circuit has stated that a  
 9 restitution order "gives the government a sufficient cognizable claim of ownership to  
 10 defeat a defendant's . . . motion for return of property, if that property is needed to satisfy  
 11 the terms of a restitution order." *Id.*<sup>4</sup> The Government asserts that it has the same  
 12 "cognizable claim of ownership" to the funds in Mr. Poff's inmate trust account under the  
 13 factual circumstances here. (Reply at 2.) The court agrees and thus finds that, although  
 14 Mr. Poff has a private property interest in his inmate trust account, his interest carries less  
 15 weight in the context of assessing *Matthews* factors because his account is encumbered  
 16 by a lien in favor of the Government arising out of a criminal judgment.

17 The second *Matthews* factor is the risk of erroneous deprivation through the  
 18 procedures used and the value of additional safeguards. *See Shinault*, 782 F.3d at 1057.

19 \_\_\_\_\_  
 20 <sup>3</sup> Federal Rule of Criminal Procedure 41(g) provides in pertinent part that "[a] person  
 21 aggrieved by an unlawful search and seizure of property or by the deprivation of property may  
 move for the property's return." Fed. R. Crim. P. 41(g).

22 <sup>4</sup> At the time that *Mills* was published, the current Federal Rule of Criminal Procedure  
 41(g) was denominated as Federal Rule of Criminal Procedure 41(e). *See Mills*, 991 F.2d at 612.

1 In *Shinault*, the court found that the risk of erroneous deprivation weighed in favor of a  
2 pre-deprivation hearing because the state statute at issue involved complex mathematical  
3 computations and individualized determinations concerning an inmate's ability to pay for  
4 the costs of incarceration. *Id.* Here, however, the court finds that there is little risk of  
5 erroneous deprivation. Mr. Poff's liability for restitution has already been finally  
6 determined and is not subject to refutation. (See Judgment.) The funds are already  
7 subject to the Government's lien. *See* 18 U.S.C. §§ 3613(c), (f). Given the certainty of  
8 Mr. Poff's liability and the magnitude of his restitution debt, there is virtually no risk that  
9 the requested \$2,663.05 payment will result in an overpayment or otherwise wrongfully  
10 deprive Mr. Poff of his property.

11 Finally, as for the third *Matthews* factor, the Government's interest in collecting  
12 restitution for the victims of fraud is significant. *See Shinault*, 782 F.3d at 1057.  
13 Congress has repeatedly demonstrated the priority it places on the collection of restitution  
14 in criminal judgments. For example, Congress has provided crime victims with the right  
15 to receive full and timely restitution. *See* 18 U.S.C. § 3771(a)(6). Further, full  
16 restitution is mandatory for financial crimes irrespective of the defendant's ability to pay.  
17 *See* 18 U.S.C. § 3664(f)(1)(A). In addition, restitution is not dischargeable in  
18 bankruptcy. *See* 18 U.S.C. §§ 3613(e), (f). Finally, Congress has limited the type of  
19 property that is exempt from the collection of restitution. *See* 18 U.S.C. § 3613(a). Thus,  
20 the court concludes that the Government's interest in collecting restitution for the victims  
21 of Mr. Poff's fraud easily outweighs Mr. Poff's minimal interest in his lien-encumbered  
22 inmate trust account.

1 The third *Matthews* factor also considers “the burdens of additional procedural  
2 requirements.” *Shinault*, 782 F.3d at 1057. Mr. Poff seeks advance notice and a hearing  
3 before his inmate trust account is encumbered. (See Resp. at 4.) As the Government  
4 points out, with advance notice, inmates such as Mr. Poff could empty their accounts and  
5 frustrate the very collection that Congress has prioritized. Thus, the Federal Debt  
6 Collection Procedures Act (“FDCPA”) provides for *ex parte* applications for writs of  
7 garnishment and other collection remedies, with notice provided only after the writ has  
8 attached to and frozen the targeted asset. *See* 28 U.S.C. § 3004(c). The FDCPA applies  
9 to the collection of criminal restitution and thus supports the court’s conclusion that the  
10 Government need not notify Mr. Poff before encumbering his inmate trust account for  
11 this purpose. 18 U.S.C. §§ 3613(a), 3664(m). Indeed, as both the Supreme Court and the  
12 Ninth Circuit recognize, “post-deprivation process can suffice ‘in limited cases’ when  
13 prompt action is required, an important government interest is involved, and there is  
14 substantial assurance that the deprivation is not baseless or unwarranted.” *Shinault*, 782  
15 F.3d at 1058 (quoting *Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 240 (1988)). The  
16 court finds that this is one such case.

17 On balance, the *Matthews* factors demonstrate the constitutionality of the  
18 Government’s encumberance of Mr. Poff’s inmate trust account. The one case Mr. Poff  
19 cites in support of his due process argument, *Quick v. Jones*, 754 F.2d 1521 (9th Cir.  
20 1985), is distinguishable. (See Poff Mot. at 3.) In *Quick*, prison officials took an  
21 inmate’s funds to pay restitution “without a determination of either civil or criminal  
22 liability.” *Id.* at 1523. In contrast, Mr. Poff was tried and convicted of 30 felony counts

1 of bank fraud, money laundering, and related crimes. (See Judgment.) During his eight-  
2 day bench trial and subsequent sentencing hearing, Mr. Poff had a full opportunity to  
3 rebut the charges against him and the calculation of his restitution. (Dkt. ## 166-89, 207,  
4 258.) Unlike the inmate in *Quick*, Mr. Poff's criminal prosecution "informed [him] of  
5 [his] financial liability" and gave him "a meaningful opportunity to contest the  
6 assessment before" the BOP encumbered his account. *See Shinault*, 782 F.3d at 1059.

7 **B. Statutory Exemption**

8 Mr. Poff asserts that most of the funds in his inmate trust account are service-  
9 related disability payments from the United States Department of Veterans Affairs ("the  
10 VA"). (Poff Mot. at 2.) He claims that these funds are exempt from collection by the  
11 Government for purposes of restitution based on 38 U.S.C. § 5301(a)(1). (Poff Mot. at  
12 2-3; Resp. at 2-4; 2d Poff Mot. at 2-4.) Section 5301(a)(1) states in pertinent part:

13 Payments of benefits due or to become due under any law administered by  
14 the Secretary shall not be assignable except to the extent specifically  
15 authorized by law, and such payments made to, or on account of, a  
16 beneficiary shall be exempt from taxation, shall be exempt from the claim  
17 of creditors, and shall not be liable to attachment, levy, or seizure by or  
18 under any legal or equitable process whatever, either before or after receipt  
19 by the beneficiary. The preceding sentence shall not apply to claims of the  
20 United States arising under such laws . . . .

21 38 U.S.C. § 5301(a)(1). Although there is scant case authority interpreting this provision,  
22 the statutory language plainly exempts claims by the United States. *Id.*; *see also Metcalf  
v. United States*, No. 12-518C, 2013 WL 1517821, at \*4 (Fed. Cl. Apr. 15, 2013) (stating  
that Section 5301(a)(1) "eliminate[s] any bar to the Federal Government attaching or  
seizing VA benefits."); *Funeral Fin. Servs., Ltd. v. United States*, No. 98 C 7905, 2000

1 WL 91919, at \*2 (N.D. Ill. Jan. 18, 2000), *aff'd sub nom. Funeral Fin. Sys. v. United*  
 2 *States*, 234 F.3d 1015 (7th Cir. 2000) ("[T]he provision seems to exempt claims of the  
 3 United States from the general ban on creditors making claims on the benefits."). Thus,  
 4 the exemption in Section 5301(a)(1) does not apply to the Government's claim here.

5 Further, as the Government points out, although service-connected disability  
 6 payments are exempt from most creditors, Congress has eliminated exemptions to the  
 7 collection of criminal restitution except for a narrow set of exemptions specifically  
 8 enumerated in 18 U.S.C. § 3613. Indeed, Congress has stated that the Government may  
 9 enforce a restitution order against all of a restitution debtor's "property or rights to  
 10 property" "[n]otwithstanding any other Federal law." 18 U.S.C. § 3613(a). Although  
 11 courts have not always accorded universal effect to the "notwithstanding" language, as a  
 12 general proposition "notwithstanding" clauses broadly sweep aside potentially conflicting  
 13 laws. *United States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007). In the specific  
 14 context of 18 U.S.C. § 3613(a), the Ninth Circuit has found that by using the  
 15 "notwithstanding" and "all property" clauses, Congress intended the Government's  
 16 ability to collect criminal restitution to trump even the broad protections against  
 17 alienation afforded to retirement plans covered by the Employee Retirement Income  
 18 Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001-1461. *Novak*, 476 F.3d at 1047-48.  
 19 Indeed, by using these clauses, the Ninth Circuit stated that "Congress manifested that  
 20 § 3613(a) means what it says—that it reaches 'all property or rights to property' . . .  
 21 including property otherwise covered by federally mandated anti-alienation provisions."  
 22 *Novak*, 476 F.3d at 1048 (italics in original). The court sees no reason not to apply the

1 reasoning of *Novak* to Section 5301(a)(1) so that the protections that ordinarily would  
2 apply to Mr. Poff's service-connected disability payments are superseded by the  
3 Government's authority to collect restitution under 18 U.S.C. § 3613(a).

4 Mr. Poff also relies upon 26 U.S.C. § 6334(a)(10)'s exemption for service-  
5 connected disability payments. (See Resp. at 3; 2d Poff Mot. at 2, 7.) Section  
6 6334(a)(10)'s exemption for service-connected disability payments is expressly  
7 incorporated by 18 U.S.C. § 3613(a)(1) and applies to restitution collection. This  
8 exemption, however, only protects amounts "payable to an individual," not amounts  
9 already paid and deposited in the recipient's account. 26 U.S.C. § 6334(a)(10). In  
10 *Hughes v. IRS*, 62 F. Supp. 2d 796 (E.D.N.Y. 1999), the court held "after an examination  
11 of the plain language of the statute, that . . . § 6334(a)(10) . . . exempt[s] from levy only  
12 amounts that are payable—that is, amounts that are not yet paid." *Id.* at 800-01. The  
13 court explained that "the funds in plaintiffs' bank account, which were levied upon by the  
14 defendants, were no longer capable of being paid" and therefore dismissed the plaintiffs'  
15 claims that the levied funds were exempt from seizure. *Id.* at 801; *see also United States*  
16 *v. Coker*, 9 F. Supp. 3d 1300, 1302 (S.D. Ala. 2014). The *Hughes* court reasoned that  
17 amounts "payable" must be distinguished from amounts already paid because, elsewhere  
18 in Section 6334(a), Congress exempts "any amounts payable to or received by" an  
19 individual. *Hughes*, 62 F. Supp. 2d at 800 (citing 26 U.S.C. § 6334(a)(9)).

20 This court also notes that the term "payable" in Section 6334(a)(10) cannot be  
21 construed to include amounts already paid without rendering the clause "or received by"  
22 in Section 6334(a)(9) to be mere surplusage. The court is disinclined to interpret a

1 statutory provision in a manner that would render a portion of it to be surplusage. *See*  
 2 *Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062-63 (9th Cir. 2008) (citing *Am. Vantage*  
 3 *Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1098 (9th Cir. 2002)). Because Mr.  
 4 Poff has already received the funds in his inmate trust account, those funds are no longer  
 5 “payable” to him and therefore are not exempt from collection by the Government under  
 6 18 U.S.C. § 3613(a)(1).<sup>5</sup>

7 Finally, Mr. Poff argues that the funds in his inmate trust account are statutorily  
 8 exempt from the Government’s enforcement action pursuant to 26 U.S.C. § 6334(a)(9).  
 9 (3d Poff Mot. at 1-2.) Section 6334(a)(9) exempts “[a]ny amount payable to or received  
 10 by an individual as wages or salary for personal services, or as income derived from other  
 11 sources, during any period, to the extent that the total of such amounts payable to or  
 12 received by him during such period does not exceed the applicable exempt amount . . . .”  
 13 26 U.S.C § 6334(a)(9). Mr. Poff asserts that he has earned less than the applicable  
 14 exempt amount, and thus the funds in his inmate trust account are exempt from collection

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16       <sup>5</sup> Mr. Poff also relies upon *Higgins v. Beyer*, 293 F.3d 683 (3d Cir. 2002). (Resp. at 3-4.)  
 17 *Higgins* involved the State of New Jersey’s attempt to collect a criminal fine under New Jersey  
 18 state law. *Id.* at 686. Because the state officials derived their authority to seize the inmate’s  
 19 funds from state law, their authority was limited by contrary federal law. *Id.* at 693. Thus, the  
 20 provisions of 38 U.S.C. § 5301(a) constituted contrary federal authority and prohibited state  
 21 officials from seizing the inmate’s veterans’ disability benefits that had been deposited into his  
 22 inmate account. *Id.* Here, the Government is collecting criminal restitution based on federal  
 statutes that enumerate certain narrow exemptions and otherwise expressly authorize the federal  
 government to enforce an order of restitution against all property “[n]otwithstanding any other  
 Federal law.” 18 U.S.C. §§ 3613(a), (f). As discussed above, the protections of 38 U.S.C.  
 §§ 3613(a)(1)-(3). Thus, although 38 U.S.C. § 5301(a) preempted the New Jersey law under  
 which the state officials were operating in *Higgins*, that statute yields to the United States’ right  
 to collect criminal restitution under 18 U.S.C. § 3613(a). *See Novak*, 476 F.3d at 1042.

1 by the Government. (3d Poff Mot. at 1-2.) As noted above, 18 U.S.C. § 3613(a)(1)  
2 exempts certain types of property from the Government's attempts to enforce a judgment.  
3 *See supra* at 11 (discussing the exemption found in 26 U.S.C. § 6334(a)(10)). Exempted  
4 property includes "property exempt from levy for taxes pursuant to section 6334(a)(1),  
5 (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 ." 18  
6 U.S.C. § 3613(a)(1). Notably, Section 3613(a)(1) excludes the exemption set forth in  
7 Section 6334(a)(9), upon which Mr. Poff relies. Accordingly, the court concludes that 26  
8 U.S.C. § 6334(a)(9) does not prohibit the Government's enforcement action against the  
9 funds in Mr. Poff's inmate trust account.

10 **C. Other Objections**

11 Mr. Poff argues that 18 U.S.C. § 3664(n) does not require payment because he has  
12 not received "substantial resources" while in prison and has been "in complete  
13 compliance with th[e] program to pay his restitution." (Poff Mot. at 2.) Although the  
14 statute does not define "substantial," the court concludes that \$2,663.05 satisfies the  
15 ordinary meaning of this term. Further, numerous courts, including district courts in the  
16 Ninth Circuit, have ruled that "any schedule established by a court for payment of  
17 restitution does not prevent the United States from levying on a defendant's property to  
18 satisfy the order of restitution." *United States v. Kuehler*, No. CR-05-60 EBLW, 2006  
19 WL 2981831, at \*2 (D. Idaho Oct. 16, 2006) (citing *United States v. Hanhardt*, 353 F.  
20 Supp. 2d 957, 960 (N.D. Ill. 2004) and *United States v. Laws*, 352 F. Supp. 2d 707, 711  
21 (E.D. Va. 2004)). Thus, the fact that Mr. Poff has been timely in his restitution payments  
22

1 to date does not prevent the Government from moving to enforce the judgment against  
2 other, additional funds in Mr. Poff's possession.

3 Finally, Mr. Poff complains that he is unable to pay for phone or email service in  
4 prison or make photo copies in the inmate law library. (Resp. at 4.) He also argues that  
5 if forced to relinquish the funds demanded by the Government, he will be unable to  
6 purchase hygiene materials from the commissary or to save funds in preparation for his  
7 eventual release. (*Id.* at 4-5.) The court takes judicial notice of the fact that the BOP will  
8 provide for Mr. Poff's necessities during his period of incarceration. In addition, after his  
9 next monthly payment of disability benefits or from the prison payroll, he will again have  
10 funds to spend or to save toward his eventual release (which is more than three years  
11 away).

12 **IV. CONCLUSION**

13 Based on the foregoing analysis, the court GRANTS the Government's motion to  
14 require payment from Mr. Poff's inmate trust account (Dkt. # 306) and DENIES Mr.  
15 Poff's motions to unencumber his inmate trust account (Dkt. # 308), for clarification  
16 (Dkt. # 313), and to preclude fraud (Dkt. # 315).

17 In addition, pursuant to 18 U.S.C. § 3664(n), the court ORDERS as follows:

18 Within 30 days from the date of this Order, the BOP shall turn over \$2,663.05  
19 from Mr. Poff's BOP inmate trust account to the Clerk of this Court, via check payable to  
20 "United States District Court, Western District of Washington," referencing Case No.  
21 CR09-00160-JLR-3, and delivered either personally or by First Class Mail to:

22 //

United States District Court, Western District of Washington  
Attn: Financial Clerk – Lobby Level  
700 Stewart Street  
Seattle, Washington 98101

Alternatively, the BOP may make the required payment to the Clerk of the Court within 30 days from the date of this Order, via electronic transfer in the manner that it makes payments through the Inmate Financial Responsibility Program.

Dated this 31st day of May, 2016.



JAMES L. ROBART  
United States District Judge